

**MINUTES**  
**SCOTTSDALE CITY COUNCIL**  
**CITY COUNCIL MEETING**  
**Tuesday, March 4, 2003**

**The Kiva  
City Hall  
Scottsdale, Arizona**

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**CALL TO ORDER (IN CITY HALL KIVA FORUM)**

Mayor Manross called to order the Regular Meeting of the Scottsdale City Council on Tuesday, March 4, 2003 in the Kiva, City Hall, at 5:05 P.M.

**ROLL CALL**

Present: Mayor Mary Manross  
Vice Mayor Ned O'Hearn  
Council Members David Ortega, Tom Silverman, Robert Littlefield,  
Wayne Ecton, and Cynthia Lukas

Also Present: City Manager Jan Dolan  
City Attorney David Pennartz  
City Clerk Sonia Robertson

**Public Comment**

**Jodi Paulsen**, 8630 E. Dianna Drive, spoke as a representative of the group opposing the Trend plan for the former Smitty's site. She explained that the community is strongly opposed to the proposal. She stated that ownership is usually better than rentals; however, not when they are age restricted. She noted that seniors prefer rentals since they don't have large space requirements nor do they want to maintain a home. She stated that the obvious reason senior housing should be provided on the site is the close proximity to the proposed senior center. She urged Council to read through the documentation she provided for them stating the reasons for the opposition in more detail since she would like Council to reconsider.

**Kim Abbs**, 9719 E. Pine Valley Road, voiced her continued support for the McDowell Mountain Ranch site for the aquatic center and park. She stated her belief that the site is far superior to the other sites being considered. She stated that parents support the location since they feel the location next to the school will be a convenient and safe place for their children to play while providing activities for the entire family.

**Tony Nelssen**, 7736 E. Redbird, requested that Council do something to provide safe and appropriate trail crossings and traffic control measures. Specifically, he requested a traffic control measure at the access to the Jomax Trail and was told that there isn't enough traffic to warrant it. He stated that in the warrant analysis, there is no equestrian component. He explained that he feels strongly that if the city is going to encourage equestrian trail use, safe and appropriate trail crossing must be provided.

**Leon Spiro**, 7814 E. Oberlin Way, praised Congressman Hayworth for his action in reviewing the issue involved in abandonment of GLO easements and read a portion of a memo from Pamela Baldwin, Legislative Attorney to Congressman Hayworth (copy attached).

**Minutes - REGULAR MEETINGS - February 3, 2003**

COUNCILMAN ORTEGA MOVED TO APPROVE THE REGULAR MEETING MINUTES OF FEBRUARY 3, 2003. COUNCILMAN SILVERMAN SECONDED THE MOTION WHICH CARRIED 7/0.

**CONSENT AGENDA**

- 1. Superpumper #12 Liquor License**  
**Request:** Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 9 (liquor store) State liquor license.  
**Location:** 15550 N Thompson Peak Py  
**Reference:** 1-LL-2003  
**Staff Contact(s):** Jeff Fisher, Plan and Permit Services Interim Director, 480-312-7619, [Jfisher@ScottsdaleAZ.Gov](mailto:Jfisher@ScottsdaleAZ.Gov)
- 2. The Rocks Club Liquor License**  
**Request:** Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 14 (private club) State liquor license.  
**Location:** 27440 N Alma School Py  
**Reference:** 2-LL-2003  
**Staff Contact(s):** Jeff Fisher, Plan and Permit Services Interim Director, 480-312-7619, [Jfisher@ScottsdaleAZ.Gov](mailto:Jfisher@ScottsdaleAZ.Gov)
- 3. Giligins Liquor License**  
**Request:** Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 6 (bar) State liquor license.  
**Location:** 4251 N Winfield Scott Pz  
**Reference:** 3-LL-2003  
**Staff Contacts:** Jeff Fisher, Plan and Permit Services Interim Director, 480-312-7619, [Jfisher@ScottsdaleAZ.Gov](mailto:Jfisher@ScottsdaleAZ.Gov)
- 4. Alta Terra Distributing Liquor License**  
**Request:** Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 4 (wholesaler) State liquor license.  
**Location:** 7642 E Gray Rd  
**Reference:** 4-LL-2003  
**Staff Contact(s):** Jeff Fisher, Plan and Permit Services Interim Director, 480-312-7619, [Jfisher@ScottsdaleAZ.Gov](mailto:Jfisher@ScottsdaleAZ.Gov)
- 5. Charmian Liquor License**  
**Request:** Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) State liquor license.  
**Location:** 10411 E McDowell Mountain Ranch Rd

**Reference:** 5-LL-2003

**Staff Contact(s):** Jeff Fisher, Plan and Permit Services Interim Director, 480-312-7619,  
[Jfisher@ScottsdaleAZ.Gov](mailto:Jfisher@ScottsdaleAZ.Gov)

**6. Fusion Restaurant & Lounge Liquor License**

**Request:** Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) State liquor license.

**Location:** 4441 N Buckboard Tr

**Reference:** 6-LL-2003

**Staff Contact(s):** Jeff Fisher, Plan and Permit Services Interim Director, 480-312-7619,  
[Jfisher@ScottsdaleAZ.Gov](mailto:Jfisher@ScottsdaleAZ.Gov)

**7. Pranksters Too Liquor License**

**Request:** Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a new series 12 (restaurant) State liquor license at an existing restaurant location.

**Location:** 7919 E. Thomas Road, Suite 102

**Reference:** 7-LL-2003

**Staff Contacts:** Jeff Fisher, Plan and Permit Services Interim Director, 480-312-7619,  
[Jfisher@ScottsdaleAZ.Gov](mailto:Jfisher@ScottsdaleAZ.Gov)

**8. Sunflower Café Liquor License**

**Request:** Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) State liquor license for an existing restaurant location.

**Location:** 7704 E. Double Tree Ranch Rd.

**Reference:** 9-LL-2003

**Staff Contacts:** Jeff Fisher, Plan and Permit Services Interim Director, 480-312-7619,  
[Jfisher@ScottsdaleAZ.Gov](mailto:Jfisher@ScottsdaleAZ.Gov)

**9. Montacino-McDowell Mountain General Plan Amendment and Rezoning**

**Request to approve:**

1. A non-major General Plan amendment from Urban Neighborhoods to Suburban Neighborhoods on a 6.32+/- acre parcel located at 12325 E Shea Boulevard.
2. Adopt Resolution No. 6225 affirming the above general plan.
3. Rezone from Multi-Family Residential, Environmentally Sensitive Lands (R-5 ESL) to Single Family Residential, Environmentally Sensitive Lands (R1-5 ESL) with amended development standards and the termination of an existing development agreement on a 6.32+/- acre parcel located at 12325 E Shea Boulevard.
4. Adopt Ordinance No. 3487 affirming the above rezoning and amended development standards.
5. Adopt Resolution No. 6229 terminating the existing development agreement No. 980108.

**Location:** 12325 E Shea Bl

**Reference:** 23-ZN-2002 & 8-GP-2002

**Staff Contact(s):** Tim Curtis, Project Coordination Manager  
480-312-4210, [tcurtis@ScottsdaleAZ.gov](mailto:tcurtis@ScottsdaleAZ.gov)

Mayor Manross opened public testimony.

**Priscilla Bown**, 12343 E. Shea, wanted to ensure that the project includes an eight-foot privacy wall. She also wanted to ensure that there are no doors, windows, or balconies overlooking her property.

**Leon Spiro**, 7814 E. Oberlin Way, requested a staff presentation. He explained that the case is an assemblage of GLO easements. He noted that the previous speaker should be made aware that there is a 33' easement along this property.

Mayor Manross closed public testimony.

**10. Bill Heard Chevrolet Conditional Use Permit**

**Request:** Approve a conditional use permit for new and used automobile sales on a 11+/- acre parcel located at 8705 E McDowell Road with both General Commercial (C-4) and Highway Commercial (C-3) zoning.

**Location:** 8705 E McDowell Rd

**Reference:** 30-UP-2002

**Staff Contact(s):** Tim Curtis, Project Coordination Manager, 480-312-4210, [tcurtis@ScottsdaleAZ.gov](mailto:tcurtis@ScottsdaleAZ.gov)

Mayor Manross opened public testimony.

**Lyle Wurtz**, 6510 E. Palm Lane, explained that he isn't for or against this action. He explained that the city doesn't need more cars, bars, and massage parlors. He explained that it doesn't do the neighborhood any good to increase the number of car dealerships since other types of businesses are needed to enhance the community.

Mayor Manross closed public testimony.

Councilman Ortega noted that this project is a multi-million dollar investment in Scottsdale. It does not have one dime of subsidy nor does it ask anything of the city other than a use permit.

**11. Fitproz Health Studio Conditional Use Permit**

**Request:** Approve a conditional use permit for a health studio on a 3.16 +/- acre parcel located at 9151 E Bell Road #102 with Industrial Park, Planned Community district (I-1 PCD) zoning district. 27-UP-2002.

**Related Policies, References:**

- Case 19-ZN-00 approved rezoning the site from R1-35 to I-1 on October 17, 2000.
- Case 33-ZN-00 approved a PCD (Planned Community District) zoning overlay on the property on March 20, 2001.
- Case 21-DR-2001 approved a 3-building complex on the site, known as the Youth Family Arts Center, on May 3, 2001.
- Planning Commission recommends approval, 5-1.

**Location:** 9151 E Bell Rd Ste 102

**Staff Contact(s):** Keith Niederer, Associate Planner, 480-312-4211, [kniederer@ScottsdaleAZ.gov](mailto:kniederer@ScottsdaleAZ.gov); Randy Grant, Chief Planning Officer, 480-312-7995; E-mail: [rgrant@ScottsdaleAz.gov](mailto:rgrant@ScottsdaleAz.gov)

**12. Mirabel Village 12 Subdivision**

**Request:** Approve a 50 lot single-family subdivision on a parcel of approximately 57 acres.

**Location:** Cave Creek Rd & Mirabel Club Drive

**Reference:** 15-PP-2002

**Staff Contact(s):** Kira Wauwie, Project Coordination Manager, 480-312-7061, [kwauwie@ScottsdaleAZ.gov](mailto:kwauwie@ScottsdaleAZ.gov)

COUNCILMAN ORTEGA MOVED TO APPROVE CONSENT ITEMS 1-12. COUNCILWOMAN LUKAS SECONDED THE MOTION WHICH CARRIED 7/0.

## **Regular Agenda**

**13. WestWorld Master Plan Revision**

**Request:**

1. The updated WestWorld Master Development Plan, consisting of an approximate 340-acre planning area.
2. Adoption of Ordinance No. 3494 affirming the above Plan.

**Location:** 16601 N Pima Rd

**Reference:** 20-ZN-1995#2

**Staff Contacts:** Kurt Jones, Interim Current Planning Director, 480-312-2524, [kjones@ScottsdaleAZ.gov](mailto:kjones@ScottsdaleAZ.gov)

Kroy Ekblaw provided an overview of the West World Development Plan as outlined below.

### **WESTWORLD Development Plan Update**

Tonight's Discussion

Approve the updated WestWorld Development Plan / Site Plan

Update on the WestWorld Master Plan Implementation Process

#### **Architecture**

-Western Character

-DRB Approval

#### **Key Impacts**

- Lighting
- Noise
- Dust
- Traffic
- Drainage
- Environmental
- Operations

#### **Recommendations**

Staff supports Planning Commission recommendation for approval per the following:

- Added stipulation for northern parking areas to return for public hearing review if to be co-utilized for recreational uses
- Commission noted their desire that operations should recognize and support smaller equestrian users and events

Mr. Ekblaw explained that recent rainfall has brought attention to drainage issues. He noted that the facility is a regional drainage facility that is designed to help protect the area. The drainage works as planned since the proposed changes do not impact the drainage plan. All activity areas are elevated above the storage basins with water being directed away from activity areas.

As part of the Bureau of Reclamation's required process, there is an environmental review in process. None of the new structures would proceed to construction until that process is completed and approval has been secured.

Brad Gessner, General Manager of WestWorld, presented the following information.

**Goal of the Master Plan Update:**

- Update the 1995 WestWorld Development Plan and implement the 1998 WestWorld Business Plan recommendations
- Address current operational and facility needs necessary to retain existing events and create new and improved facilities and infrastructure to attract new event programming
- Provide a planning guide for development of WestWorld over the next ten years

**1998 Business Plan Vision**

WestWorld is a premier, nationally recognized, user-friendly equestrian center and special event facility serving our community and target market visitors."

**Community Involvement**

Public Open House meetings (8), were held between May and November of 2002 to solicit ideas, identify neighborhood concerns, and to update interested parties

**What does the updated plan include?**

New enclosed multi-purpose building  
Enclosed & Enlarge Equidome  
Covering Arenas (3 & 4)  
Additional horse barns and boarding facility  
Equestrian Concession & Boarding Facilities  
Open Air Theatre  
Polo Stables

**Scope of Work/Deliverables**

Volume 1 - Executive Summary  
Volume 2 – Market & Economics  
Volume 3 – Utilities/Infrastructure  
Volume 4 – Design Guidelines  
Volume 5 – Detailed Cost Estimate

**Planning, Design and Construction Budget Estimates**

|                                     |                     |
|-------------------------------------|---------------------|
| Total Improvements-                 | \$87,692,638        |
| 17.6 acre land acquisition-         | \$3,350,000         |
| 6 acre land acquisition-            | \$ 900,000          |
| Bond 2000 Funding-                  | - \$ 2,585,400      |
| <b>Total Funding of Master Plan</b> | <b>\$89,357,238</b> |

### **Why Implement WestWorld Master Plan?**

To Retain Existing Events  
To Attract New Equestrian and Special Event Programming  
Year Around Event Programming  
Increase Economic Impact

### **Action for tonight**

Approval of the updated WestWorld Development Plan / Site Plan.  
–Per the Planning Commission Recommendation

Mayor Manross opened public testimony.

**Lyle Wurtz**, 6510 E. Palm Lane, explained that the early days of WestWorld brings back some nasty memories. If Council approves this open-ended attack on taxpayer wallets, he stated his belief that they do not deserve to sit on the dais. He wondered how the city could be planning for the future with an \$89 million project. He urged Council to do nothing on this “perpetually draining turkey” now. Wait until the financial picture becomes clearer before looking at the issue again.

**Ned Sickie**, 6226 East Laurel Lane, talked as the General Manager of Scottsdale Marriott Suites Hotel. He stated his support of the project and urged Council to vote for the plan. He stated his belief that the new multi-purpose facility is exciting. He felt the plan would provide the city with the opportunity to provide long-term relationships with some of the city’s long-term events. He also stated his belief that the city could expand the opportunity beyond horses and cars to attract new business into the WestWorld facility. He felt that WestWorld is a critical part of the city’s tourism infrastructure. He suggested that the city form a small task force to look at some alternative funding options for the project.

**Geoffrey R. Ward**, P.O. Box 2540, Carefree, spoke as the President of the Arizona Reining Horse Association. Stated his belief that the plan will benefit the community and merchants. Even though the city may not implement the entire plan, at least approval tonight would provide the opportunity to move forward. He suggested that Council take the plan and work with it.

**William Clark**, 7100 E. Lincoln, explained that he is a member of the North Scottsdale Polo Club. He explained that Brad and his management have helped the club to be able to return to use the WestWorld facility. He stated his belief that the plan is a good plan and needs to move forward. It will have a good benefit over the long run and would provide a venue for lots of events.

**Arthur Mones**, 15050 N. Thompson Peak Parkway, explained that he represents two homeowners associations approximately one-half mile from WestWorld. He noted that, although he doesn’t oppose the facility, there is a downside that includes noise, lights, traffic, smells, and water. He displayed a picture of standing water on the property and requested that something be done to deal with the issues. He stated his belief that someone should be able to run a break-even analysis.

**Andy Gladstone**, 7436 E. Stetson Drive, #185, explained that he and his wife run a destination management company in Scottsdale for corporate travelers. He stated his support for the WestWorld plan since he envisioned that the facility’s uses could be expanded to include corporate functions. He felt the improvements would allow the city to be a destination for high-end corporate travelers across the country.

**Craig Jackson**, 3020 N. Scottsdale Road, explained that this plan originated from the basis of the 1998 Business Plan, which was compiled with equestrian users input. He felt the new plan is long overdue. He



stated his opinion that the facility needs to be improved. He expressed his enthusiasm about the city moving forward with this plan.

Mayor Manross closed public testimony. Two additional comment cards were received from citizens in opposition to the plan, while one card was received in favor of the plan from citizens not wishing to speak.

Councilman Silverman stated that it is important that WestWorld remain primarily an equestrian facility. He also stated his belief that it is important for the facility to be sensitive to its neighbors. The plan would help keep the WestWorld a quality equestrian facility. He explained that the western experience is extremely important to the character of Scottsdale. He felt the multi-purpose center would help make the facility a year round facility and help the city's signature events. He stressed that approval of the plan would simply be saying that the city would "like" to implement the plan, although none of the improvements are funded.

Councilman Ecton explained that he found very little in the plan that he could object to other than the cost. He questioned what is being done to correct the drainage problem on the property. Mr. Gessner explained that the arenas are draining the way they are designed. He explained his belief that Councilman Ecton is referring to a problem that occurred after a particularly heavy rainfall in a short period of time. Since these are outdoor facilities, the only solution would be to cover or enclose the arena.

Councilman Ecton expressed his opinion that all the preparation necessary for some of the city's signature events highlights the need for a better facility. If WestWorld wants to host more events and make money, the facility must be improved. It is a great facility, although expansion is necessary to continue to attract certain events.

Councilwoman Lukas agreed that the plan is way overdue since it is time to upgrade the facility. She also agreed that it is important to maintain the equestrian focus. She pointed out that the signature events that are held at the facility are important to the city's economy and way of life.

Councilman Ortega explained that the master plan would be a blue print that would be used as a guide to ensure that each phase of improvements reinforce each other. He stated that the city is custodian of the WestWorld lease position. The lease will run through the year 2036. The City looks forward to 33 more years of having a solid relationship with the bureau; therefore, it is important that the city plan wisely. He stated his belief that supporting this plan is the responsible thing to do.

In response to questions from Vice Mayor O'Hearn, Mr. Gessner explained that the improvements are projected over a 10-year period. He noted that the planning team identified the multi-purpose center (\$24 million) as a priority. A phased approach would allow the facility to continue to operate while the improvements are being made. He explained that, although the multi-purpose center would provide enough space for most of the signature events, it would be designed in a way that additional covered structures could be added as needed. In addition to providing facilities for the signature events, the improvements will enable WestWorld to better serve the smaller users as well.

Councilman Littlefield questioned drainage on the southeast corner of WestWorld. Mr. Gessner explained that the property is a flood retention basin that is designed to perform exactly as it is. It doesn't mean that there might not be an issue with standing water. He assured Council that the city is working with the County Health Department to treat the water to eliminate problems with mosquitoes. Beyond that, the city is looking at ways of engineering the area so it percolates into the ground water more quickly so there aren't long periods of standing water.

Mr. Gessner explained for Councilman Littlefield that the design team suggested five or six ways to fund the proposed improvements. He indicated his belief that all options should be considered. The user fees could also be increased, although any consideration of increasing the fees would have to be reviewed by City Council. He felt that the smaller group's rates would probably remain the same to enable them to continue to use the facility, while the larger group's rates would most likely increase.

Mayor Manross recalled that all the stakeholders that were involved in the past were very supportive of the possibility of creating public-private partnerships to complete some components of the WestWorld plan. She explained that the city would require all the contributions and partnerships as possible to make the improvements a reality.

COUNCILWOMAN LUKAS MOVED TO APPROVE THE UPDATED WESTWORLD MASTER DEVELOPMENT PLAN, CONSISTING OF AN APPROXIMATE 340-ACRE PLANNING AREA AND ADOPT ORDINANCE NO. 3494 AFFIRMING THE ABOVE PLAN WITH THE STIPULATION MODIFICATION (COPY ATTACHED). COUNCILMAN SILVERMAN SECONDED THE MOTION WHICH CARRIED 7/0.

#### **14. Wireless Communications Ordinance Text Amendment**

**Request:**

1. Approve an update Ordinance No. 455 (Zoning Ordinance) pertaining to Wireless Communications Facilities.
2. Adopt Ordinance No. 3493 affirming the above text amendment.
3. Adopt Resolution No. 6247 declaring the above text amendment a public record.

**Location:** City-Wide

**Reference:** 3-TA-2000#2

**Staff Contact(s):** Tim Curtis, Project Coordination Manager, 480-312-4210, [tcurtis@ScottsdaleAZ.gov](mailto:tcurtis@ScottsdaleAZ.gov)

Randy Grant introduced item 14 with a brief slide presentation. His presentation and comments have been outlined below.

#### **Purpose**

- Consider the Draft Ordinance and discuss 6 unresolved Issues

#### **Timeline**

- Early 1990's: Scottsdale Wireless Ordinance created
- 1996: Federal Telecommunications Act
- 1997: Scottsdale Wireless Ordinance revised
  - Provided incentives for antennas that met community goals
- 2000: City Council directed that input be gathered to update Scottsdale's ordinance
- 2001: Amendment approved requiring Use Permits for wireless facilities in the Preserve

### **Telecommunications Act of 1996**

- Section 704(a) of the Telecommunications Act of 1996 provides that,  
“No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission’s regulations concerning such emissions.”

### **FCC Rules for RF Exposure**

- FCC establishes limits for Maximum Permissible Exposure (MPE)
  - Current RF exposure standards, adopted in 1996, are based on input and recommendations from:
    - ❖ National Council on Radiation Protection & Measurements
    - ❖ Institute of Electrical & Electronics Engineers (IEEE)
    - ❖ U.S. Environmental Protection Agency (EPA)
    - ❖ Occupational Safety & Health Administration (OSHA)
    - ❖ Food & Drug Administration (FDA)

### **Goals of the Ordinance**

- Update the Ordinance to Reflect Changes in Technology
- Reduce Visual Impacts of new Facilities
- Refine the Review and Approval process
- Provide Adequate Opportunities for Wireless Service

### **Summary of Amendments**

- Tiered Approach to Applications
  - Low Visual Impact: Staff Approval
  - High Visual Impact: Public Hearing Process
- Reflects New Technology
  - Smaller equipment, more easily concealed
- Greater Certainty in Process
  - Predictable review, approval process
- More Flexibility in Siting Antennas
  - Allow with use permit on large residential lots
- Increases Public Notification for new Antennas
- Remains within Telecommunications Act limits on local authority

### **Remaining Issues**

- 1A. Public Notice for New Facilities
- 1B. Public Notice for Existing Facilities
2. RF Initial Compliance
3. RF Continued Monitoring
4. WCF in Flagpoles
5. Indemnification

**Remaining Issue #1A:**

**Public Notice for New Facilities**

- Question: How extensive should public notification be for new WCF applications?
- Issue: Existing policy is that applicant notify property owners within 300 feet, and the draft ordinance formalizes this policy. Some feel that notification should be extended to those living, working, and spending time within 750 feet.
- PC Recommendation:
  - Staff approvals – applicant must notify property owners within 300' (750' in R1-43 and larger lots)
  - Public Hearings – applicant must meet with property owners within 300' (750' in R1-43 and larger lots)

**Remaining Issue #1B:  
Public Notice for Existing Facilities**

- Question: Is there a need to notify the public about the 204 existing wireless facilities in the city?
- Issue: Some feel that those who live, work, attend school or spend time near existing facilities should be notified. Others feel that notification for existing sites is unnecessary.
- PC Recommendation: No separate notification should be required, but the city should have a map of existing sites available for citizens.

**Remaining Issue #2:  
RF Initial Compliance**

- Question: What should be the city's role in verifying that FCC RF Guidelines and Regulations are met for new facilities?
- Issue: Some feel that compliance is adequately addressed with FCC documentation, while others feel that the city should require separate verification when new facilities are installed.
- PC Recommendation: Written report from providers documenting compliance at the time of installation, including reports on existing facilities within 150' of new applications.

**Remaining Issue #3:  
RF Continued Monitoring**

- Question: Should the City verify that FCC RF Regulations are met after facilities are operating?
- Issue: Some feel that FCC oversight is adequate. Some believe that the city should periodically monitor RF emissions to verify compliance.
- PC Recommendation: Written report from providers every 5 years that documents RF emissions.

**Remaining Issue #4:  
WCF in Flagpoles**

- Question: Should Wireless Facilities in Flagpoles be allowed?
- Issue: Some are concerned about U.S. flag protocol and financial incentives that may lead to additional flagpoles. Others feel that flagpole installations are appropriate in areas of the community where siting options are limited.
- PC Recommendation: Wireless facilities should not be located on flagpoles.

### **Remaining Issue #5: Indemnification**

- Question: Should the City require indemnification from Wireless Providers?
- Issue: Some feel that indemnification offers some protection against future lawsuits. Others believe it does not. The city has not required indemnification in other similar circumstances.
- PC Recommendation: Do not require indemnification.

### **Goals of the Ordinance**

- Update the Ordinance to Reflect Changes in Technology
- Reduce Visual Impacts of new Facilities
- Refine the Review and Approval process
- Provide Adequate Opportunities for Wireless Service

### **RF Exposure Comparisons MPE Limits**

"The MPE limits adopted by the FCC for occupational/controlled and general population/uncontrolled exposure incorporate a substantial margin of safety and have been established to be well below levels generally accepted as having the potential to cause adverse health effects."

### **Percentage -- MPEu Limits Electromagnetic Radiation**

- There are two categories of electromagnetic radiation -- ionizing and non-ionizing
  - Ionizing radiation
    - ❖ X-rays and Gamma rays
    - ❖ Molecular changes that may damage in biological tissue
  - Non-ionizing radiation
    - ❖ Radio, TV signals, infrared and visible light
    - ❖ Does not cause ionization of atoms and molecules

Mayor Manross opened public testimony.

**Morris Michelson**, 2601 W. Broadway Road, Tempe, explained that when the process began a few years ago, he was under the impression that the efforts were to encourage alternative cell sites. He stated that the problem with eliminating flagpole use as wireless sites is that other possibilities such as light poles may not be available in all areas of the city. He read a letter from the National Flag Foundation that indicated the flagpoles, as installed by T-Mobile, meet all the requirements for flag etiquette.

In response to questions from Councilman Ortega, Mr. Michelson explained that the Arizona National Guard facilities around the state have wireless technology installed on flagpoles. Flagpoles are also used at other military installations and Federal properties.

**Octavio Lamas**, 7145 E. First Street, spoke as a representative of Quest Wireless. He stated his belief that the language proposed is a good compromise. He urged Council to allow flagpoles to be used for wireless sites.

**Tony Nelssen**, 7736 E. Redbird, spoke as a member of the Wireless Ideas Team. He addressed the fact that he was the lone dissenting vote on the Planning Commission approval due to two issues he felt strongly about. He felt strongly that the wireless companies should verify compliance every two or three

years to ensure the site remains in compliance. He also stated his support of requiring indemnification. He urged Council to ensure that any consideration of flagpole use would go through the DRB process or the use permit process so they are monitored for appropriateness.

**Susan Bittersmith**, 5806 E. Lewis, spoke in support of the recommendations by the Planning Commission except eliminating the use of flagpoles. Flagpoles are a very easy way to reduce the visual impact on the community. She stressed that regulation of radio frequency emissions are a role for the federal government. The FCC monitors the emissions on a periodic basis.

**Arthur Mones**, 15050 N. Thompson Peak Parkway, stated that the city has the authority to regulate the placement, construction, and modification of personal wireless service facilities. If the facility doesn't meet FCC regulations, the city can deny, revoke, or reject any installation.

**Nick Wood**, One AZ Center, spoke as a representative of T-Mobile and APS. He stated his belief that the proposed amendment represents a compromise. He felt that, with a little more compromise, the remaining issues could be resolved. He explained his belief that there are four reasons why the city doesn't want to require specific information from the industry on RF emissions. The four reasons include: 1) it is not legal to do so, 2) the city wouldn't know what to do with the information, 3) the industry is already regulated by the federal government, and 4) it is not necessary. He explained that the industry is willing to provide a letter to the city confirming that their facilities are in compliance with FCC regulations.

Mr. Wood explained for Councilman Silverman that the industry is opposed to providing emission results to the city since there is a federal agency that is given the authority as the 1996 Telecommunications Act prohibits the city from stepping into that role. As a result, it would be unfair for the industry to have to go through the process of accumulating the information and forwarding it to the city.

In response to questions from Councilman Ortega, Mr. Wood explained that the minimum distance wireless equipment can be placed from the ground is 6'.

Laura Altschul, Director of Governmental Affairs for T-Mobile, explained that, legally, the radiation center of the equipment must be a minimum of 6' from any humans. She clarified that the 6' minimum would be from the front of the equipment radiating outward since no emissions are emitted behind the equipment. She verified that a typical installation emits only one-thousandth of the maximum allowable limit.

In response to additional questions from Councilman Ortega, Ms. Altschul explained that all the wireless carriers have operational centers that are set up in each market. The centers monitor the sites 24 hours per day, 7 days per week. There are various safety measures that are in place to ensure that the equipment is operating properly and efficiently. She estimated that approximately 3 co-locations could be placed on a 100' pole, although it depends on other factors as well as the height of the pole.

Councilman Littlefield questioned the procedure that is necessary to verify for the FCC that a new site is in compliance with their regulations. Ms. Altschul explained that every site must be reported to the FCC at the time the site is going to be built. The only sites that the FCC actually registers are sites that are 200' tall or higher. She acknowledged that she isn't sure what the difference is between reporting a site and registering it.

Mr. Mickelson explained that when T-Mobile places a new site on-air, the company checks with various federal agencies. FAA clearance is needed as well as other federal clearances. Some agencies require

additional measures to be taken before clearances are given. The information is filed with the FCC including what type of equipment, the expected height, and the type of facility being built. If the equipment meets FCC certification and is under a certain height limit, the FCC doesn't require any additional information.

Vice Mayor O'Hearn requested clarification on the type of monitoring and site inspections that are done by the industry. Ms. Altschul explained that software is used to ensure the equipment and the network is operating efficiently. Site inspections are completed periodically for example, to ensure that graffiti has not been painted on the equipment.

In response to questions from Vice Mayor O'Hearn regarding indemnification, Mr. Wood explained that if the industry indemnifies the city in respect to claims, they wouldn't be concerned with liability due to negative health issues. The industry knows that the emissions are not harmful; however, the fear would be the amount of unfounded nuisance suits that may result.

Mr. Stably confirmed for Councilman Ecton, that if any significant changes are made to an application, the facility would have to go back through an approval process.

Councilman Ecton expressed his belief that a written report every three years from the industry stating that their facilities are in compliance with FCC regulations isn't good enough. He suggested that the report should include language confirming that the equipment has been tested and it is in compliance. Mr. Wood verified that the additional language would be acceptable as long as the company itself would be responsible for the testing.

Councilman Littlefield inquired when the industry monitors RF emissions. Michael Sandoval, Quest Wireless, explained that his company physically monitors the emissions every six months. He clarified that the equipment is not capable of emitting RF emissions beyond the maximum amount allowed by the FCC.

**Howard Myers**, 6631 E. Horned Owl Trail, explained that there is nothing illegal or unethical about anything the Wireless Ideas Group proposed. He explained that the city approves the locations for the wireless facilities; therefore, the city has some responsibility associated with them. He stated his belief that the proposal achieves what the industry wanted since it enables sites to come on-line quicker. He supported the Planning Commission's recommendations since he felt their recommendations are responsible. He stated his support for the suggested indemnification requirement. He stressed his opinion that it is very important to provide the city with information on the accumulative affect of multi-purpose facilities. He stated that his issue with the use of flagpoles is that by allowing these installations, there is a monetary incentive to add a flagpole where there wouldn't ordinarily be a pole. He explained that there are several other opportunities for cellular sites without the use of flagpoles. At a minimum, he suggested that flagpole use be allowed only after going through the use permit process. He stated that if the city is sincere about keeping wireless facilities out of the preserve, the FCC allows the city to require an environmental impact study to be completed before a facility could be placed on virgin ground. He recommended the requirement as an additional disincentive to locate in the preserve.

**Harry Bekkela**, 10040 E. Happy Valley, explained that he is a member of the Wireless Ideas Team. He acknowledged that it is difficult to provide cellular coverage to all residents. He stated his support of allowing flagpoles as an option for wireless sites. He felt it would balance the coverage issue with the aesthetics issue. He encouraged Council to take a close look at the issue.

**Kevin Howell**, 5239 N. 69<sup>th</sup> Place, spoke as a representative for Verizon Wireless. He stated his belief that the Ideas Team was well represented. He stated his support of the ordinance. He urged Council to consider the flagpole use when considering the revisions.

**Ginnie Ann Sumner**, 3333 E. Camelback, #280, stated her support for the ordinance since she felt it is a good compromise. She suggested that it is time to proceed with the update due to the certainty it would provide the community.

Mayor Manross closed public testimony.

Councilwoman Lukas questioned the idea of indemnification. Attorney Pennartz explained that although Paradise Valley has a code provision that relates to indemnification, their town attorney explained that the provision came as a surprise to him. It is not something that they have actively been obtaining from the providers so there hasn't been an occasion to defend the provision as of yet.

In response to questions from Councilman Ecton, Attorney Pennartz explained that there are two other cities in California that he is aware of with provisions for indemnification. He stated that it is not a wide spread provision. He stressed that there are not many Arizona municipalities that have the indemnification provisions. Since Congress has pre-empted local government from regulating RF emissions, the city is not in the position of being responsible from any type of legal standpoint on the RF emissions. The more the city ventures into that field, the more possibility that a challenge will be forthcoming from a provider or the city will make themselves responsible for taking on the issues. He advised Council that the indemnification doesn't really provide the city with any measure of risk coverage since the law says the city doesn't have a responsibility there.

Vice Mayor O'Hearn explained that staff identified the question for consideration by Council as whether this is logical, beneficial, and appropriate.

#### **INDEMNIFICATION ISSUE**

COUNCILMAN ORTEGA MOVED NOT TO REQUIRE INDEMNIFICATION AS PER THE PLANNING COMMISSION'S RECOMMENDATION. COUNCILWOMAN LUKAS SECONDED THE MOTION WHICH CARRIED 4/3 (N.O., W.E., T.S).

#### **ISSUE OF WCF IN FLAGPOLES**

Mayor Manross stated her belief that the use of flagpoles as cellular site should be allowed through the use permit process.

Councilman Silverman agreed that the use of flagpoles should be allowed to provide choices.

COUNCILMAN SILVERMAN MOVED TO ALLOW FLAG POLES TO BE USED AS WIRELESS FACILITIES THROUGH THE USE PERMIT PROCESS. COUNCILMAN ORTEGA SECONDED THE MOTION WHICH CARRIED 7/0.



## **RF CONTINUED MONITORING**

In response to questions from Councilman Silverman, Mr. Grant explained that staff does have the ability to flag and to trigger a reminder to staff to request reports from the industry periodically.

COUNCILMAN LITTLEFIELD MOVED TO REQUIRE A WRITTEN REPORT FROM PROVIDERS EVERY 3 YEARS STATING THAT THE FACILITY IS IN COMPLIANCE WITH FCC REGULATIONS AND HAS BEEN TESTED. COUNCILWOMAN LUKAS SECONDED THE MOTION WHICH CARRIED 7/0.

## **INITIAL COMPLIANCE**

COUNCILWOMAN LUKAS MOVED TO REQUIRE A WRITTEN REPORT FROM THE PROVIDER CERTIFYING THAT THE EQUIPMENT THEY ARE INSTALLING AT A NEW LOCATION COMPLIES WITH FCC REGULATIONS INCLUDING THE CUMULATIVE EFFECT OF CO-LOCATION OF WCF ON ONE SITE. COUNCILMAN ORTEGA SECONDED THE MOTION WHICH CARRIED 7/0.

## **PUBLIC NOTICE FOR EXISTING FACILITIES**

COUNCILMAN SILVERMAN MOVED TO MAKE MAPS OF EXISTING ANTENNA LOCATIONS AVAILABLE TO THE PUBLIC. COUNCILMAN ECTON SECONDED THE MOTION WHICH CARRIED 7/0.

## **PUBLIC NOTICE FOR NEW FACILITIES**

COUNCILMAN ECTON MOVED TO REQUIRE THE APPLICANT FOR A NEW WCF TO SEND A WRITTEN NOTICE TO ALL RESIDENTS, BUSINESS OWNERS, SCHOOLS, AND OTHER PUBLIC FACILITIES REQUESTING THAT THEY NOTIFY TENANTS BY POSTING A NOTICE IN THE FACILITY AND NOTIFYING ALL STUDENTS IN THE FACILITY WHEN A WIRELESS ANTENNA FACILITY IS LOCATED WITHIN 750 FEET OF A PROPOSED WCF. COUNCILMAN LITTLEFIELD SECONDED THE MOTION WHICH CARRIED 4/3 (D.O., M.M., C.L.).

## **RESOLUTION AND ORDINANCE**

COUNCILMAN LITTLEFIELD MOVED TO ADOPT RESOLUTION NO. 6247 AND ORDINANCE 3493 SUBJECT TO THE ABOVE MENTIONED MOTIONS AFFIRMING THE TEXT AMENDMENT. COUNCILMAN ECTON SECONDED THE MOTION WHICH CARRIED 7/0.

**Public Comment - None**

**City Manager's Report - None**

**Mayor and Council Items - None**

## **Adjournment**

With no further business to discuss, Mayor Manross adjourned the meeting at 9:59 P.M.

### **SUBMITTED BY:**

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**Ann Eyerly, Council Recorder**

### **REVIEWED BY:**

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**Sonia Robertson, City Clerk**

### **C E R T I F I C A T E**

I hereby certify that the foregoing Minutes are a true and correct copy of the Minutes of the Regular City Council Meeting of the City Council of Scottsdale, Arizona held on the 4th day of March 2003.

I further certify that the meeting was duly called and held, and that a quorum was present.

**DATED** this \_\_\_\_\_ day of March 2003.

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**SONIA ROBERTSON**  
**City Clerk**